

EXHIBIT 4

Declaration of Greg E. Hegge, United States
Army Corps of Engineers

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

THE GENERAL LAND OFFICE OF THE STATE OF TEXAS, and DAWN BUCKINGHAM, M.D., in her official capacity as Commissioner of the Texas General Land Office,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY; and ALEJANDRO MAYORKAS, in his official capacity as Secretary of the Department of Homeland Security,

Defendants.

Civil Action No. 7:21-cv-00272

THE STATE OF MISSOURI; THE STATE OF TEXAS,

Plaintiffs,

v.

JOSEPH R. BIDEN, in his official capacity as President of the United States, *et al.*

Defendants.

Civil Action No. 7:21-cv-00420
(formerly No. 6:21-cv-00052)

DECLARATION OF GREG E. HEGGE

I, Greg E. Hegge, declare as follows:

1. This declaration is based on my own personal knowledge and information made available to me in the course of my official duties.
2. I am the Chief of the Phoenix Program Management Office, Los Angeles District, South Pacific Division, U.S. Army Corps of Engineers (USACE), an agency of the Department of

the Army. I have held this position since February 26, 2022. In this role, I support the contract closeout by USACE of the Department of Defense (DoD) Border Barrier Program, including seeking funding for the closeout and material disposition. The Los Angeles District, South Pacific Division of USACE is the sole component of USACE responsible for disposition of excess border wall construction materials purchased with DoD funds. From May 24, 2020, to February 25, 2022, I served as the Deputy District Engineer and Chief, Programs and Project Management (DPM) with the then-South Pacific Border District. From November 10, 2019, to February 10, 2020, I served as the temporary Chief, Programs and Project Management for Task Force Barrier and the newly formed South Pacific Border District. From February 11, 2020, to May 24, 2020, I served as the Customs and Border Protection Program Chief, South Pacific Division.

3. Based upon my current and past job duties, I am familiar with the actions that USACE took to construct physical barriers along the southwest border as part of the DoD Border Barrier Program, including the federal funding used, contract acquisitions, and close outs and disposition of the construction materials.
4. In fiscal years 2019 and 2020, USACE awarded and oversaw execution of contracts for the design and construction of the DoD Border Barrier Program. The DoD Border Barrier Program was funded under 10 U.S.C. § 284 (support for counterdrug activities) (284) and 10 U.S.C. § 2808 (Military Construction) (2808). Congress provided this funding in DoD's appropriations bill; it did not come through the Department of Homeland Security. For the DoD Border Barrier Program, all construction materials (including bollards and bollard panels) were purchased with 2808 and 284 funding. The DoD Border Barrier Program was

separate from the Border Barrier Program funded by Department of Homeland Security (DHS) appropriations.

5. Following Presidential Proclamation 10142, Termination of Emergency With Respect to the Southern Border of the United States and Redirection of Funds Diverted to Border Wall Construction, dated January 20, 2021, which ended the national emergency declaration with respect to the southern border of the United States, and at the direction of DoD, the Corps suspended and eventually terminated the 284 and 2808-funded border barrier contracts pursuant to Federal Acquisition Regulation (FAR) Clause 52.249-2, Termination for Convenience of the Government. Pursuant to FAR Part 49, the termination for convenience process contemplates a series of steps including making work sites safe, disposing of excess materials, submission of termination settlement proposals from affected contractors, audits of those proposals by the Defense Contract Audit Agency, and negotiations between the Corps and the contractors regarding final contract settlement amounts.
6. In December 2023, Congress passed Section 2890 of the National Defense Authorization Act (NDAA) for Fiscal Year 2024 (Pub. L. 118-31), which directed the disposition of the “all remaining construction materials” purchased using 2808 and 284 funds in the DoD Border Barrier Program. The NDAA, Section 2890, required DoD to submit a plan “to use, transfer, or donate to States on the southern border of the United States all ‘covered materials,’ with prioritization given to the refurbishment and or maintenance of ports of entry along the southwest border and construction projects aimed at stopping illicit human and vehicle traffic along the border of the United States with Mexico.” Per section 2890, the term “covered materials” means “[a]ll remaining construction materials currently possessed by the United States Government that were purchased under section 2808 and 284 of title 10, United States

Code, from fiscal years 2017 through 2021, including bollards [bollard panels] and Nucor tubular square structural tubes.”

7. DoD submitted the required plan under NDAA, Section 2890, to Congress on March 14, 2024 (hereinafter “NDAA Disposal Plan”). In the NDAA Disposal Plan, DoD relayed that DoD will use, transfer, or donate covered materials through implementation of existing policies and processes governing the disposition of excess and surplus materials. Those policies and processes are set forth in Department of Defense Manual (DoDM) 4160.21, Volumes 1-4, “Defense Material Disposition: Disposal Guidance and Procedures,” October 22, 2015, Incorporating Change 4, August 31, 2022, and Part 102 of Title 41, Code of Federal Regulations (CFR), also known as the Federal Management Regulation (FMR). The process includes an DoD internal screening cycle, a “special programs” screening cycle, and federal agencies screening cycle prior to the transfer of items outside of the federal government. Section 2890, then, gives states on the southern border a preference for the covered materials. The Defense Logistics Agency (DLA) manages the process for DoD entities.
8. The NDAA Disposal Plan required USACE to declare the covered materials excess and to complete all turn-in documentation required to transfer the property to DLA Disposition Services. Per the Plan, all covered materials were to remain at the current USACE locations, including contractor locations, as the covered materials go through the disposition process. DLA Disposition Services receipt-in-place processes were used, which allows DLA to screen and allocate property at current locations, rather than requiring interim transportation of the covered material to DLA field sites.

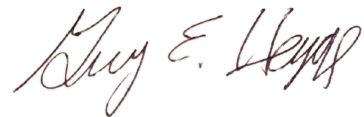
9. In accordance with the NDAA Disposal Plan, USACE completed the transfer paperwork for all remaining covered materials to DLA for screening and disposition as excess property. Section 2890 directed DoD to continue disposing of the covered material until DoD was no longer incurring any cost to maintain, store, or protect the material.¹ The DoD Border Barrier Program remaining covered materials (bollard panels and gate parts) were stored in Arizona, New Mexico, and Texas.
10. After the transfer paperwork was completed, DLA became responsible for management and disposition of all covered materials. DLA has kept USACE informed as to the disposition of the covered materials and coordinated the pick-up of the covered materials with USACE and the recipient. The disposition of the covered materials is nearing completion and was carried out as follows:
 - a. Federal agencies had the opportunity to review and request excess property. Since March 2024, U.S. Customs and Border Protection requested and received roughly half the border wall material turned in by the Army Corps of Engineers.
 - b. States on the southern border were then given preference under the Section 2890 provisions. Texas and California requested and received covered materials through the process.
 - c. The remaining covered materials, not claimed through the process, were then offered for sale to the DLA contractor, Ironplanet/GovPlanet.

¹ The DoD construction materials were stored on a mix of Federally-owned lands (primarily Bureau of Land Management) as well as private storage yards. The private storage yards were leased by the USACE construction contractors. The storage costs will be settled as part of the contract close out process. The contract close outs for the DoD Border Barrier program (including the storage cost of construction materials) are funded using 2808 and 284 funding.

11. USACE has only used 2808 (Military Construction) and 284 (counter narcotics) funds received from DoD to pay for the implementation of the NDAA Disposal Plan.
12. The Los Angeles District, South Pacific Division of USACE is not disposing of border wall materials purchased with funds from Subsection 209(a)(1) of the Consolidated Appropriations Act of 2020 or corresponding funds under Section 210 of the Consolidated Appropriations Act of 2021. The Los Angeles District, South Pacific Division of USACE has not obligated or expended any Section 209 or Section 210 DHS funds to implement the NDAA Disposal Plan.

This declaration is made pursuant to 28 U.S.C. 1746. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this ___ day of December 2024



Greg E. Hegge
Chief
Phoenix Program Management Office
Los Angeles District
South Pacific Division
U.S. Army Corps of Engineers